IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 3919 of 2005
Date of Decision: 26.9.2006.

Zile Singh ...Appellant

Versus

Dharambir and others ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri G.S. Gandhi, Advocate, for the appellant.

JUDGMENT

The plaintiff is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby the suit for declaration that the plaintiff is owner in possession of ½ share of land measuring 313 kanals 19 marlas, was dismissed.

Admittedly, the suit property was owned by one Shera son of Tuhia. He died in somewhere in the year 1901-1902 leaving behind his wife Moti. Mutation of the estate of Shera was sanctioned in favour of Moti in the year 1935. Earlier some entries were made in favour of the plaintiff as well. The challenge in the suit is to the alienation effected by Moti prior to and after the commencement of the Hindu Succession Act, 1956. It is the case of the plaintiff that Moti has performed Kareva after the death of Shera with one Pokhar and, therefore, she is not entitled to inherit the estate of Shera.

Both the Courts have recorded concurrent findings of fact that the plaintiff has failed to prove the performance of Kareva by Moti at any

point of time. Rather, a finding has been returned that the mutation Exhibit P.8, wherein it is recorded that she has performed Kareva is a clandestine action of the plaintiff and is a result of fraud played by Surat Singh upon Moti. Since, there is no evidence of Kareva, Moti has rightly been held to be entitled to inherit the estate of Shera as after the commencement of the Hindu Succession Act, 1956 the limited ownership vested in Moti, has ripened into full ownership and thus, she was competent to handle the property in the manner which is deemed fit.

In second appeal, learned counsel for the appellant has primarily relied upon mutation Exhibit P.8 showing the change of ownership from the name of Moti in favour of Ramji Lal, son of Jeet Ram and ExhibitP.17 i.e. the statement of Surat Singh son of Ranjit Singh dated 19.8.1935. In the records column of mutation Exhibit P.8, it is mentioned that Surat Singh has made a statement that Mst. Moti has performed Kareva about 10 years back. Since the said endorsement is on the basis of statement of Surat Singh, the predecessor-in-interest of the appellant, the appellant cannot rely upon the said endorsement a proof of Kareva performed by Moti. Similarly, the statement Exhibit P.17 is again by Surat Singh, which is to the effect that Moti has performed Kareva. The said statement is also not relevant to return a finding regarding solemnisation of Kareva. There is no admissible evidence so as to return a finding that Moti has performed Kareva after the death of her husband. The findings of fact recorded by the Courts below are sought to be disputed by reappreciation of evidence in second appeal.

I do not find any material illegality or irregularity in the findings recorded by the Courts below, which may raise any substantial

question of law in the present second appeal.

Hence, the present appeal is dismissed.

26-09-2006 (HEMANT GUPTA)
ds JUDGE